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4. District Court may not adjudge witness guilty of contempt because in court's opinion he is wilfully refusing to testify truthfully, and confine him until he shall give testimony which court deems truthful. *Id.*

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4. *Id. Performance.* If party charge himself with obligation possible to be performed, he must abide by it unless performance becomes impossible through act of God, the law, or the other party. *Id.*

5. *Id. Unexpected Hardship.* May be considered in determining scope of contract obligation, provided contract is doubtful and requires construction. *Id.*

6. *Id. Vis Major.* Effects of war, rendering street railway franchise rates inadequate, not *vis major* excusing further performance. *Id.*

7. *Carriers; Agency; Hours of Service Act.* Fact that carrier acts only as agent for other carriers may affect contractual obligations to shippers, but cannot change obligations under Hours of Service Act. *United States v. Brooklyn Eastern Dist. Term* 296

8. *Government Contracts; Building; Time Extension. Quære:* Whether unreasonable delay on part of Government in approving contract entitles contractor to extension where contract fixes date for completion of work? *Hathaway & Co. v. United States* 460

9. *Id. Damages.* Provision for deducting, in addition to an amount fixed as liquidated damages, expense of superintendence and inspection, in case of failure to complete work by time specified, will be enforced when clearly expressed in contract. *Id.*

10. *Id. Liquidated Damages.* Contract for construction of two government buildings, provided that in case of delay beyond specified period United States might deduct \$200 for

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each day of delay until completion as liquidated damages.

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11. *Id. Penalty.* Whether party should be relieved from plain stipulation for liquidated damages upon ground that penalty was intended, depends upon facts and not conjectural situation that might have arisen under contract. *Id.*

12. *Id. Post Office Supplies.* When acceptance of bid by Postmaster General completes contract. *United States v. Purcell Envelope Co.* 313

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14. *Id. Damages.* Upon Government's repudiation of contract before time for performance, measure of damages is difference between contract price and cost of performance. *Id.*

15. *Id. Evidence.* Presumption that evidence touching amount of damages, including expense necessary to make contractor ready for performance, was duly considered by Court of Claims. *Id.*

16. *Id. Construction.* Contract to furnish in quantities as ordered envelopes that contractor may be called upon by Post Office Department to furnish during four years, *construed* as entitling contractor to supply all needed in that period. *Id.*

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18. *Id. Change of Rates.* Where railroad undertook transportation of mail during certain period upon notice that compensation had been fixed for period but "subject to future orders," *held*, that contract did not guarantee railroad against change of rates. *Id.*

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19. *Id.* *Reservation of Right to Change Rates.* May be availed of through act of Congress, even though Postmaster General had no authority when contract was made to change rates. *Id.*

20. *Id.* *Weighing.* Act of Mar. 2, 1907, directing Postmaster General to readjust compensation for transportation of mail on certain railroad routes carrying certain average weights of mail per day, did not require reweighing. *Id.*

21. *Id.* *Transportation of Troops.* Classes of persons not embraced within term "troops of the United States," as used in land grant acts, and agreement of Union Pacific Co. *United States v. Union Pac. R. R.* 354

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8. *Id. Bill of Exceptions.* In absence of, court must presume that evidence sustained conviction. *Id.*

9. *Id. Espionage Act.* Conspiracy to obstruct recruiting by newspaper articles circulated in places where they would tend to effect object, an offense under Act of 1917. *Id.*

10. *Id. Allegations.* Means need not be specifically agreed on; and need not be alleged. *Id.*

11. *Id.* Allegation of making, or intent to make, false reports, unnecessary. *Id.*

12. *Id.* Under § 4, overt acts sufficiently charged as done to effect object. *Id.*

13. *Id. Treason.* Acts not treasonable, punishable under Espionage Act, even if others, included by it, could be punished only as treason. *Id.*

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15. *Espionage Act*. Delivery of speech in such words and circumstances that its probable effect will be to prevent recruiting, punishable under Act of 1917, as amended in 1918. *Debs v. United States* 211
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4. *Extraneous Documents; Admissibility; Intent.* Records of prosecutions of third parties whose acts were referred to in defendant's speech with apparent understanding and approval, and of writings of third parties in like case, held admissible to explain true import of remarks and his intent. *Debs v. United States* 211

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Order of President continuing in force for government of Canal Zone "the laws of the land, with which the inhabitants are familiar," was construed by Government as including Civil Code of Panama, and was followed by act of Congress ratifying laws and orders promulgated by President. *Held*, that order merely embodied rule that change of sovereignty does not end existing private law, and that act neither fastened upon Zone a specific civil-law interpretation of Code nor overthrew principle of common-law construction adopted and applied by Supreme Court of Zone before act was passed. *Panama R. R. v. Bosse* 41

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INTERSTATE COMMERCE. See **Constitutional Law, II.**

1. *Test of.* Interstate commerce is a practical conception, and what falls within it must be determined upon considerations of established facts and known commercial methods. *Public Utilities Comm. v. Landon* 236
2. *Id. Piping and Sale of Gas.* While piping of natural gas from State to State, and its sale and delivery to independent local gas companies, is interstate commerce, retailing of gas by latter to consumers is intrastate commerce and not a continuation of such interstate commerce. *Id.*
3. *Question of Fact, not Expectation or Intent.* Movement of rough lumber to place in same State, to be manufactured, in expectation that products will be marketed and shipped outside State, not interstate commerce. *Arkadelphia Co. v. St. Louis S. W. Ry.* 134
4. *Id.* Whether shipment was at given time interstate is question of fact. *Southern Pac. Co. v. Arizona* 472
5. *Id.* Evidence held insufficient to prove that traveling show was moving interstate, at time of proceedings before state commission, to require transportation within State and fix rate. *Id.*
6. *Id.* Mere intention to continue tour beyond State where show was performing, held not enough to give interstate character to contemplated journey within State. *Id.*
7. *Shoveling Snow,* between track and platform, employment in interstate commerce, within Federal Employers' Liability Act. *New York Cent. R. R. v. Porter* 168

INTERSTATE COMMERCE ACTS. See **Boiler Inspection Act; Employers' Liability Act; Food, 2; Hours of Service Act; Intoxicating Liquors, 1; Meat Inspection Act; Safety Appliance Act.**

1. *Rates; Power of Commission.* Rates reduced with approval of Commission because of water competition may be increased with its approval without finding that increase rests on changed conditions other than elimination of water competition. *Skinner & Eddy Corp. v. United States* 557

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2. *Id. Long and Short Haul.* Orders under § 4, as amended in 1910, granting relief from long and short haul clause, subject to future modification by Commission without application by carrier. *Id.*

3. *Jurisdiction; Enjoining Commission.* A suit to enjoin an order claimed to be beyond powers of Commission may be entertained without preliminary application for relief to the Commission. *Id.*

4. *Id. Venue.* Under jurisdictional Act of Oct. 22, 1913, suit to enjoin order of Commission increasing rates previously fixed on an application under long and short haul clause, may be brought in the district of residence of a defendant carrier who joined in original application. *Id.*

5. *Carmack Amendment; Proof of Loss.* In action against initial carrier for goods lost on connecting line shipper need not prove loss "caused by" connecting carrier. *Chicago & E. I. R. R. v. Collins Produce Co.* 186

6. *Id.* Defendant initial carrier introducing shipper's depositions of conversations with connecting carrier's agents attempted to object that agents were not identified. *Id.*

7. *Carmack Amendment; Written Claim of Loss.* Bill of lading may condition carrier's liability for damages on service of written claim within 5 days after removal of stock from cars. *Balt. & Ohio R. R. v. Leach* 217

8. *Id.* Condition not waived or satisfied by oral notice to connecting carrier's agents. *Id.*

INTERSTATE COMMERCE COMMISSION. See **Interstate Commerce Acts.**

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INTOXICATING LIQUORS:

1. Reed Amendment, prohibiting transportation "into" any State the laws of which prohibit manufacture, etc., does not preclude transportation through such State to another. *United States v. Gudger* 373

2. One who acquires liquor after approval and before effective date of state law making its possession unlawful is not

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deprived by the law of property without due process. *Barbour v. Georgia* 454

3. Presumption that liquor was acquired between those dates when date of acquisition not shown. *Id.*

4. *Quære*: Whether law would be constitutional as applied to one who acquired liquor before enactment. *Id.*

INVENTIONS. See Patents for Inventions.**JOINT STOCK ASSOCIATION:**

Under Income Tax Law. See **Taxation, II.**

JUDGMENTS. See Injunction.

Finality. See **Jurisdiction, III, 8, 23, 24.**

Scope and form of decree. See **Procedure, VI.**

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1. *Adjudication of Bankruptcy; Effect.* Concludes all the world as to status of debtor *qua* bankrupt, but does not bind strangers as to facts or subsidiary questions of law upon which it is based. *Gratiot State Bank v. Johnson* 246

2. *Reversal; Effect on Power to Assess Damages.* Effect of reversal of erroneous injunction decree, on power to assess damages under injunction and preliminary injunction bonds, the mandate allowing further consistent proceedings and reversed decree reserving right to make future orders. *Arkadelphia Co. v. St. Louis S. W. Ry.* 134

3. *Id. Second Appeal.* When supplementary proceedings in District Court, after reversal, are part of main cause, directly appealable to this court. *Id.*

4. *Id.* Effect of failure to assign error and appeal from part of original decree releasing preliminary injunction and discharging sureties. *Id.*

5. *Reversal; When Conclusive.* Decree reversing injunction of state rates with directions to dismiss bill, conclusive as to their general adequacy and right of shippers to recover excess

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collected under injunction, though without prejudice to further suit under changed conditions. *Id.*

6. *Against Revenue Collector; Satisfaction by United States.* Where tax sustained by Commissioner of Internal Revenue and its invalidity under statute not clear, there is probable cause for its exaction by collector, and under Rev. Stats., § 989, in an action against him, recovery will be from United States. *Crocker v. Malley* 223

7. *Id. Set-off.* Where collector, with probable cause, collects excessive tax, amount due United States should be deducted from recovery, in an action against him, and such deduction will conclude United States. *Id.*

8. *Interest on; Power of Legislature.* Revivor to escape statute of limitations adds no new efficacy to judgment with respect to power of legislature to stop running of interest. *Missouri & Arkansas Lumber Co. v. Sebastian County* 170

9. *Id.* Interest on judgments, when subject to legislative termination. *Id.*

10. *Id.* Statutory interest on judgments not contractual, but penalty or liquidated damages. *Id.*

11. *Id. Quære:* As to judgment on contract stipulating for interest. *Id.*

12. *Allowing Further Proceedings.* Dismissal of bill for injunction without prejudice to further proceedings for damages. *United Railroads v. San Francisco* 517

13. *Stare Decisis.* What is said in an opinion upon point not properly involved cannot control in subsequent case where very point is presented for decision. *Union Tank Line Co. v. Wright* 275

JUDICIAL CODE. See **Jurisdiction.**

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1. Use of horse-hair mats in extracting oil. *Werk v. Parker* 130

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3. Court cannot say, upon judicial knowledge, that legislature, in excepting railroad restaurants, etc., from law placing restrictions on hours of labor of women in hotels, had no adequate ground for distinction; possibly one might be found in need of adjusting service in excepted restaurants to hours of trains. *Dominion Hotel v. Arizona* 265

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See **Admiralty; Bankruptcy Act; Constitutional Law; Equity; Procedure.**

As to facts decided by administrative officers. See **Interstate Commerce Acts**, 1-4; **Meat Inspection Act**, 3, 6-9; **Mines and Mining**, 5; **Public Lands**, 5, 7; **Taxation**, III, 1.

Federal questions. See *infra*, III, V; **Procedure**, V, 2, 3.

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I. In General. Moot Cases.

1. When suit against state tax officials becomes moot by expiration of their term. *Shaffer v. Howard* 200
2. Whether act of local legislature violated Philippine Organic Act, by delegating to Public Utility Commissioners power to prescribe contents of reports of corporate common carriers, has become moot question since case brought to this court, due to amendment prescribing what reports shall contain. *Public Utility Commrs. v. Compañía General* 425

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II. Jurisdiction of Federal Courts; in Contempt.

1. Basis of power of federal courts to punish summarily for contempt committed in their presence is to secure from obstruction in performance of judicial duties; element of obstruction must clearly appear. *Ex parte Hudgings* 378
2. Perjury *in facie curiæ* is not punishable as contempt apart from obstructive tendency; District Court may not adjudge witness guilty of contempt because in court's opinion he is wilfully refusing to testify truthfully. *Id.*

III. Jurisdiction of this Court.

(1) *In General.*

1. *Constitutional Question* affording jurisdiction must be substantial and properly raised below. *Sugarman v. United States*.
2. *Irregularities.* May decline to dismiss on ground that writ of error and citation were not made returnable in time, when irregularity had color of authority from court below. *Beaumont v. Prieto*. 554
3. *Mandate.* Effect of mandate allowing further proceedings after reversal. *Arkadelphia Co. v. St. Louis S. W. Ry.*. 134

(2) *Original.*

4. *Habeas Corpus.* Where this court declined leave to file petition for *habeas corpus*, because of competency of other courts to afford relief, motion for leave to apply for writ to District Court denied, as superfluous. *Ex parte Tracy*. 551
5. *Id.* Where District Court exceeded its power in committing witness for contempt, original jurisdiction in *habeas corpus* properly invoked. *Ex parte Hudgings*. 378
6. *Mandamus* can not be directed to Circuit Court of Appeals to control proceedings in case remanded to District Court and pending exclusively in latter. *Ex parte Wagner*. . 465
7. *Interlocutory Proceedings* for accounting in District Court will not be forbidden upon ground that disposition of other proceedings before this court may possibly render accounting nugatory and useless expense. *Id.*

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(3) *Over Circuit Court of Appeals.* See 12, 17, *infra*.

8. *Alaska.* Under §§ 134, 247, 241, Jud. Code, when case involving constitutional as well as other issues is taken from District Court for Alaska to Circuit Court of Appeals for the Ninth Circuit, judgment of latter court not reviewable by writ of error but only by certiorari. *Alaska Pacific Fisheries v. Alaska* 53
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9. *Federal Question; Mining Law.* In suit in District Court to determine extralateral rights between patented mining claims, complaint averred that construction and application of §§ 2322-2332, Rev. Stats., were involved, set up discovery, location and patent of plaintiffs' claim, and, to meet defect of location notice under state law, averred possession and working of plaintiffs' claim for more than 5 years from date of discovery, the limitation period provided by § 2332. *Held*, that latter allegations were part of plaintiffs' case, and involved construction and application of § 2332, and hence judgment of Circuit Court of Appeals was reviewable in this court by appeal. *Butte & Superior Co. v. Clark-Montana Co.* 12

(4) *Over District Court.*

10. *What is State Law.* Orders of state commission fixing railroad rates are laws within Jud. Code, § 238, allowing direct review when state law is claimed to be unconstitutional. *Arkadelphia Co. v. St. Louis S. W. Ry.* 134

11. *Supplementary Proceedings* assessing damages on injunction, taken after reversal by this court, are part of main cause and reviewable by this court directly. *Id.*

12. *Exclusive Jurisdiction.* When diverse citizenship is absent and jurisdiction of District Court is based solely upon ground that suit arises under Constitution, appeal will not lie to Circuit Court of Appeals, but only, and exclusively, to this court. *Raton Water Works Co. v. Raton.* 552

13. *Federal Question.* To empower this court to review judgment of District Court as involving Constitution, under Jud. Code, § 238, writ of error must present substantial constitutional question, properly raised below. *Sugarman v. United States.* 182

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(5) *Over Court of Claims.* See VI, *infra*.

14. *Finding* that delay by Government in approving contract was reasonable is a finding of ultimate fact, binding on this court unless made without evidence or inconsistent with other facts found. *Hathaway & Co. v. United States* 460

15. *Afterthought.* Contention that sufficient credit of time not allowed for extra work *held* not reviewable in this court, it not having been made in Court of Claims. *Id.*

16. *Lack of Finding.* When Court of Claims fails to state what contract was between claimant and Government, this court cannot find it from facts which do not establish contract as matter of law. *Del., Lack. & W. R. R. v. United States* 385

(6) *Over District Court for Alaska.* See III, 8, *supra*.

17. Provisions of Jud. Code governing review of cases coming from Alaska are to be construed in light of their legislative history and of Judiciary Act of 1891. *Alaska Pacific Fisheries v. Alaska* 53
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18. *Local Law.* This court will not disturb decision on local question of contract, unless clearly wrong. *Beaumont v. Prieto* 554

19. *Treaty Cases.* Appeal from Supreme Court of Islands perfected before Act of 1916, is governed by § 248, Jud. Code, which gives this court jurisdiction in all cases in which any treaty is involved. *Compañia General v. Alhambra Cigar Co.* 72

20. *Id.* Decision that name is geographical and descriptive term not subject to registration as trade-name under law before or since cession of Islands, that its use was not unfair competition, and that suit was not for infringement of trade name, *held* not to involve Treaty of Paris of 1898. *Id.*

21. *Local Question; Value in Dispute.* Judgment which denied right of Public Utility Commissioners to require Manila street car company to give free transportation to

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detectives, based upon construction of franchise ordinance, held not reviewable under Jud. Code, § 248, before amendment of 1916, (1) as not involving Constitution or any statute, treaty, title or privilege of United States, and (2) because value in controversy did not exceed \$25,000. *Public Utility Commrs. v. Manila Elec. R. R. Co.*..... 262

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22. *Rights and Immunities.* Under § 237, Jud. Code, as amended, denial of rights and immunities under Federal Employers' Liability Act reviewable only by certiorari. *Chicago & G. W. R. R. v. Basham*..... 164

23. *Finality; Rehearing.* Under § 237, as amended, judgment must be final; judgment is not final until petition for rehearing disposed of by state court. *Id.*

24. *Id. Limitation.* When petition for rehearing entertained in state court, judgment not final for purposes of review until petition denied or otherwise disposed of, and 3 months' limitation of Act 1916 begins to run from that time. *Citizens Bank v. Opperman*..... 448

25. *Cases Reviewable.* Classes of cases to which, under Act 1916, power to review judgments from state courts by writ of error is limited. *Id.*

26. *What is State Law.* Regulation of state board of health, upheld by state court under state pure food law, is state legislation in ascertaining relation to federal food law. *Corn Products Refg. Co. v. Eddy*..... 427

27. *Id.* Order of state commission, under legislative authority, requiring railroad to restore a siding, is state law within Constitution and acts of Congress regulating jurisdiction of this court. *Lake Erie & W. R. R. v. Public Utilities Comm.* 422

28. *Error or Certiorari.* When decision of state court upholds state statute in conflict with valid law of United States, review is by writ of error. *New Orleans & N. E. R. R. v. Scarlet*..... 528

29. *Local Question.* Objections based on manner of laying out improvement district, and on alleged failure to conform with city charter, raise only local questions. *Withnell v. Ruecking Constr. Co.*..... 63

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30. *Id. Examining Whole Record.* For determining whether error was prejudicial, this court will examine whole record, leaving state questions to the decision of state courts in cases coming from them. *Yazoo & M. V. R. R. v. Mullins* 531
 31. *Raising Federal Question.* Under Jud. Code, § 237, as amended, this court cannot consider claim of federal right not made in state court at proper time and in proper manner under state practice and which was denied consideration on that ground. *Hartford Life Ins. Co. v. Johnson* 490
 32. *Federal Question.* Exercise of independent judgment by courts of one State in construing charter granted by another raises no federal question, if no statute or decision of the other State, construing the charter, was pleaded or put in evidence. *Id.*
 33. *Concurrent Findings; Negligence.* In absence of manifest error, concurrent findings by state courts that evidence of negligence in case under Federal Employers' Liability Act is insufficient to go to jury, will not be reexamined. *Gillis v. N. Y., N. H. & H. R. R.* 515
- IV. **Jurisdiction of Circuit Court of Appeals.** See III, (3); 6, 12, 17, *supra*.
1. When diverse citizenship absent and jurisdiction of District Court based upon ground that suit arises under Constitution, appeal will not lie to Circuit Court of Appeals, but only, and exclusively, to this court. *Raton Water Works Co. v. Raton* 552
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- V. **Jurisdiction of District Court.** See II, 2; III (4); *supra*; **Bankruptcy Act.**
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 2. *Habeas Corpus; Custody of Infant.* No jurisdiction in *habeas corpus* to determine and award custody of infant at suit of alien against citizen of State of forum, when only question is which of parties is the mother. *Matters v. Ryan* 375

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3. *Id.* Claim that such case arises under law of United States because infant was imported by respondent in violation of Immigration Laws is frivolous. *Id.*
4. *Id.* *Diverse Citizenship; Pecuniary Interest. Quære:* Whether diversity of citizenship with averment of pecuniary interest could confer jurisdiction on federal court in *habeas corpus*. *Id.*
5. *Local Suits; Service of Process.* Suit to set aside a transfer of property is local, in the sense of Jud. Code, § 54, allowing service on defendant in his district of residence in the same State. *Collett v. Adams* 545
6. *Id.* Such local suits excepted by Jud. Code, § 51, from general rule against suing defendant in district other than that of his inhabitancy. *Id.*
7. *Admiralty; Requisition of Ship*, under Act of June 15, 1917, for war purposes, but without displacing custody and possession of marshal, does not oust jurisdiction of District Court in admiralty. *Ex parte Whitney Steamboat Co.* 115
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8. *Receivership; Enjoining Officials in Several States.* District Court, having extended receivership under Jud. Code, § 56, over entire business and property of company engaged in interstate transportation and sale of gas in several States of circuit, has jurisdiction of dependent bill by receiver to enjoin state officials from imposing rates alleged confiscatory and burdensome to interstate business. *Public Utilities Comm. v. Landon* 236
9. *Effect of Mandate*, allowing further proceedings after reversal. *Arkadelphia Co. v. St. Louis S. W. Ry.* 134
10. *Id.* *To Assess Damages on Injunction Bonds after Reversal*, with directions to dismiss without prejudice, the mandate allowing further consistent proceedings. *Id.*
11. *Id.* Effect of order releasing bonds and discharging sureties, not appealed from, on power to assess damages, under such mandate, where reversed decree reserved right to make further orders. *Id.*
12. *Id.* *Reference*, under rule of court referring only to damages under injunction bonds, may extend to other damages suffered under injunction. *Id.*

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13. *Enjoining Order of Interstate Commerce Commission*, claimed to be beyond powers of Commission, without preliminary application for relief to Commission. *Skinner & Eddy Corp. v. United States* 557

14. *Id. Venue*. Under jurisdictional Act of Oct. 22, 1913, suit to enjoin order increasing rates previously fixed on application under long and short haul clause, may be brought in district of residence of a defendant carrier who joined in original application. *Id.*

VI. Jurisdiction of Court of Claims. See III (5), *supra*.

1. Act of July 2, 1864, providing for purchase for United States of products of States declared in insurrection, etc., was in addition to Abandoned Property Act, and not amendment of that act in sense of Jud. Code, § 162, which gives jurisdiction to Court of Claims over claims for property taken under latter act and sold. *O'Pry v. United States* 323

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2. In absence of satisfactory explanation, delay of 20 months after removal from office in applying for mandamus against Secretary of Interior to compel reinstatement, *held* laches, it appearing that another appointee had meantime been filling office and drawing salary. *Id.*

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1. *Transportation Contracts.* Where railroad undertook transportation during certain period upon notice from Post Office Department that compensation had been fixed at certain rates but "subject to future orders," held, that contract did not guarantee against change of rates during that period. *Del., Lack. & W. R. R. v. United States.* 385

2. *Id. Changing Rates.* Reservation of right to change rates may be availed of by United States through act of Congress, even though Postmaster General had no authority when contract was made to change rates. *Id.*

3. *Id. Reweighing.* Act of Mar. 2, 1907, directing Postmaster General to readjust compensation for transportation of mail on certain railroad routes carrying certain average weights of mail per day, did not require reweighing. *Id.*

4. *Id. Increased Compensation.* Act of Mar. 4, 1913, authorizing Postmaster General to add not exceeding 5% per annum to compensation of railroads, under pending contracts for transportation of mail, left increases, within that limit, to his discretion. *United States v. Atchison, T. & S. F. Ry.* 451

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5. *Id.* In absence of satisfactory explanation, delay of 20 months after removal from office in applying for mandamus against Secretary of Interior to compel reinstatement, held laches, it appearing that another appointee had meantime been filling office and drawing salary. *Id.*

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3. Whether name "sausage" is deceptive as applied to such compound is question of fact for Secretary, under power to make regulations for carrying act into effect, and his decision, fairly arrived at, is conclusive. *Id.*
4. Applies to oleomargarine. *Brougham v. Blanton Mfg. Co.* 495
5. Registration of trade-name under trade-mark law has no bearing on right to use it under Meat Inspection Act. *Id.*
6. Decision of Secretary of Agriculture that trade-name is deceptive conclusive on courts. *Id.*
7. He may revoke approval and disapprove. *Id.*
8. Name "Creamo" properly disapproved when percentage of cream in product seriously reduced. *Id.*
9. Investment on faith of approval does not prevent subsequent disapproval. *Id.*

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1. *Location Notice; Extralateral Rights.* In determining extralateral rights between adjoining patented claims, failure of earlier location notice to comply with state law is immaterial if junior locator, at time of locating, knew that earlier locator was in possession of and working his claim. *Butte & Superior Co. v. Clark-Montana Co.* 12
2. *Id.* Purpose of location notice is to give warning of prior appropriation. *Id.*
3. *Id. Possession.* Unequivocal possession of claim gives constructive notice of possessor's rights thereunder. *Id.*
4. *Extralateral Rights; Priority.* As between two patented claims, priority of right to vein of one where it dips beneath

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and unites with vein on the other is not determined by dates of entries and patents but by priority of discovery and location. *Id.*

5. *Id. Presumption from Patent.* In absence of adverse suit, no presumption that anything was considered by Land Department, in patenting claim, except question of right to the surface. *Id.*

6. *Id. Duty to Adverse.* An application to patent a lode mining claim invites only such contests as affect surface; and where no surface conflict involves the apex, a prior locator of adjacent unpatented claim is not obliged to adverse to protect his right to follow his vein extralaterally on the dip. *Id.*

7. *Id. Conveyance.* Quitclaim of undivided interest in claim, held to pass only rights appertaining to that claim and not to affect extralateral rights appertaining to adjoining claim owned by grantor. *Id.*

8. *Id. Decreeing Relief.* In suit to determine extralateral mining rights and for accounting, plaintiff may be granted relief which proven conditions warrant without prejudice to future supplemental proceedings based on revelations of future mining development. *Id.*

9. *Discovery and Location; Oil Lands.* To create valid rights or initiate title as against United States, discovery within location essential. *Union Oil Co. v. Smith* 337

10. *Id. Possession before Discovery.* For purpose of exploring for mineral, a qualified person who has entered peaceably upon public land is a licensee or tenant at will of United States and allowed a right of possession, the extent of which, *i. e.*, whether confined to *pedis possessio* or coterminous with boundaries of his inchoate location,—not decided. *Id.*

11. *Id.* Right of possession before discovery may be maintained only by continued actual occupancy by qualified locator engaged in prosecution of work looking to discovery. *Id.*

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